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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDY MARTIN GRATZER,

Defendant and Appellant.

H038433

(Santa Clara County

Super. Ct. No. C1107517)

Defendant Randy Martin Gratzner pleaded no contest to reckless driving while fleeing a police officer (Veh. Code, § 2800.2 - count one), theft or unauthorized use of a vehicle (Veh. Code, § 10851, subd. (a) - count two), hit and run resulting in injury or death (Veh. Code, § 20001, subds. (a), (b) - count three), receipt of stolen property (Pen. Code, § 496, subd. (a) - count four), being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a) - count five), and possession of marijuana (Health & Saf. Code, § 11357, subd. (b) - count six). Defendant also admitted the allegations that he suffered two strike prior convictions (Pen. Code, §§ 667, subds. (b)-(i), 1170.12) and that he had served two prior prison terms (Pen. Code, § 667.5, subd. (b)). After striking one strike prior conviction finding pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, the trial court sentenced defendant to 12 years in state prison. The trial court imposed: (1) a three-year upper term on count one, which was doubled to six years pursuant to Penal Code section 667, (2) one-third of a two-year term

on counts two, three, and four, which was doubled to one year and four months for each of these counts, (3) one year for each of the Penal Code section 667.5 prior convictions, and (4) concurrent terms of 90 days in county jail on counts five and six. The trial court also ordered defendant to pay restitution of \$14,200 to one victim and \$4,250 to another. Defendant filed a timely notice of appeal.

On May 16, 2011, Officer Cuong Phan attempted to pull over a black Acura at the intersection of The Alameda and El Camino Real because the car had been reported stolen. Phan activated his lights, but the driver of the Acura accelerated and drove through a parking lot at an unsafe speed. As the driver turned onto The Alameda, Phan activated his full lights and audible sirens. The driver of the Acura then made unsafe turns and continued to travel at an unsafe speed, including 50 to 60 miles per hour in a residential neighborhood. At one point, the car was driven on the wrong side of the street. Phan eventually canceled his pursuit because there were too many pedestrians. He then contacted the police department and provided a description of the car. When Phan returned to the police department, he learned that the car was involved in a hit and run collision at Hedding Street and Park Avenue.

Officer Chris Martin interviewed the victim of the crash. She indicated that defendant, the driver of the Acura, had crashed into her car and fled the scene. She suffered a chest fracture, and subsequently experienced neck and back pain. Martin also spoke to Donnell Thomas, the registered owner of the Acura, who confirmed that the car had been stolen. The license plate on the Acura had been reported stolen from another individual.

Officer Ruben Sanchez arrived at the scene and saw defendant walking away from the accident. When defendant saw Sanchez, defendant said, "Sorry, I messed up," and put his hands up. Sanchez arrested defendant. When Sanchez searched defendant, he found a plastic bag of marijuana in his pocket. Defendant was also found to be under the influence of methamphetamine.

Appointed appellate counsel has filed an opening brief that states the case and the facts but raises no issues. Defendant has submitted written argument on his own behalf.

Defendant contends that he “was rushed and did not have any of [his] charges looked at as first offense charges and as they are besides the under [the] influence charge and as to being charged with GTA and receiving stolen property as the same charge.” First, that defendant had not been previously convicted of the offenses charged in the present case would not have affected either a verdict had he gone to trial or his sentence. Second, as to his contention that “GTA” or grand theft auto and receiving stolen property are the same charge, defendant is mistaken. Defendant was convicted of taking the Acura of Donnell Thomas in count two and receipt of stolen property, a license plate, from another individual in count four.

Defendant also states that he does not understand why the prosecution was able to charge his prior Arizona offense of aggravated robbery as a prior strike conviction in the present case when it did not do so in December 2008 in connection with one of his prior cases. The record on appeal does not disclose why defendant was not previously charged with this prior offense. However, the prosecution properly charged defendant in the present matter because his prior robbery conviction in Arizona does constitute a “strike” under California law. (*People v. Mumm* (2002) 98 Cal.App.4th 812, 818-819.)

Defendant next argues that his sentence is “real harsh” and it will be impossible for him to pay restitution of \$14,000. Given defendant’s conduct, we find no merit to this argument.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Márquez, J.